

January 14, 1999

H.E. Mr. Kamel Morjane  
Chairman, Dispute Settlement Body  
World Trade Organization  
Centre William Rappard  
154, Rue de Lausanne  
1211 Geneva 21

Re: Recourse by the United States to Article 22.2 in EC - Regime for the Importation, Sale and Distribution of Bananas (DS 27)

Dear Mr. Chairman:

Pursuant to Article 22.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, the United States is requesting authorization from the Dispute Settlement Body (DSB) to suspend the application to the European Communities (EC), and member States thereof, of tariff concessions and related obligations under the *General Agreement on Tariffs and Trade 1994*, covering trade in an amount of US\$520 million. This level of suspension is equivalent to the level of nullification or impairment of benefits accruing to the United States that result from the EC's failure to comply with the recommendations and rulings of the DSB in *EC - Regime for the Importation, Sale and Distribution of Bananas*.

Please inscribe this item on the agenda of the DSB meeting to be held on January 25, 1999 and circulate the attached request to DSB members.

Sincerely,

Rita D. Hayes  
Ambassador

cc: H.E. Roberto Betancourt, Permanent Mission of Ecuador  
H.E. Roderick Abbott, Permanent Delegation of the European Commission  
H.E. Eduardo Sperisen Yurt, Permanent Mission of Guatemala  
H.E. Dacio Castillo, Permanent Mission of the Republic of Honduras  
H.E. Alejandro de la Peña, Permanent Mission of Mexico  
Dr. Alfredo Suescum, Permanent Mission of the Republic of Panama

***EC - Regime for the Importation, Sale and Distribution of Bananas (DS 27):  
Recourse by the United States to Article 22.2 of the Understanding on  
Rules and Procedures Governing the Settlement of Disputes***

Pursuant to Article 22.2 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)*, the United States requests authorization from the Dispute Settlement Body (DSB) to suspend the application to the European Communities (EC), and member States thereof, of tariff concessions and related obligations under the *General Agreement on Tariffs and Trade 1994 (GATT)*, covering trade in an amount of US\$520 million. This level of suspension is equivalent to the level of nullification or impairment of benefits accruing to the United States that results from the EC's failure to bring its regime for the importation, sale and distribution of bananas (banana regime) into compliance, by January 1, 1999, with the *GATT* and the *General Agreement on Trade in Services (GATS)* or to otherwise comply with the recommendations and rulings of the DSB in *EC - Regime for the Importation, Sale and Distribution of Bananas*.

**The EC's Failure to Implement the DSB's Recommendations and Rulings**

On May 8, 1996, the DSB established a panel at the request of Ecuador, Guatemala, Honduras, Mexico and the United States, to examine the EC banana regime. Both the panel and the Appellate Body in this dispute found the EC banana regime in violation of the *GATT* and the *GATS*. On September 25, 1997, the DSB adopted the report of the panel, as modified by the Appellate Body. The resulting DSB recommendations and rulings include, *inter alia*, the recommendation that the EC bring the measures found to be inconsistent with the *GATT* and the *GATS* into conformity with its obligations under those agreements. (WT/DS27/AB/R, para. 257; WT/DS27/R, para. 9.2). A WTO-appointed arbitrator subsequently determined that the "reasonable period of time" for the EC to implement the DSB recommendations and rulings would expire by January 1, 1999.

On July 20, 1998, the EC Council of Agriculture Ministers formally approved amendments to the banana regime and on July 28, those amendments were published in the *EC Official Journal* (EC 1637/98; "Regulation 1637"). On October 31, 1998, the European Commission published additional implementing provisions concerning the administration of import licenses for bananas (EC 2362/98; "Regulation 2362"). Regulations 1637 and 2362 became effective on January 1, 1999. These regulations perpetuate discriminatory aspects of the EC banana regime that were identified in the DSB's recommendations and rulings as inconsistent with WTO agreements. Therefore, these amendments fail to bring the EC's banana regime into conformity with the EC's WTO obligations within the reasonable period of time, as required by the DSB recommendations and rulings, thus perpetuating the nullification or impairment of benefits accruing to the United States, directly and indirectly, under the *GATT* and the *GATS*, that was found by the panel and the Appellate Body in this dispute. The United States thus is entitled to redress under Article 22 of the DSU.

## **U.S. Recourse to Article 22.2 of the DSU**

Article 22.1 of the DSU provides that “full implementation” of the recommendations and rulings of the DSB is the preferred conclusion to a dispute. In the event that implementation is not achieved within the established “reasonable period of time,” the parties to a dispute may attempt to negotiate mutually acceptable compensation, if requested by the prevailing party, or the prevailing party may be authorized by the DSB to suspend concessions and obligations. Article 22.2 of the DSU provides that, within 20 days after the “reasonable period” expires, a prevailing party may request DSB authorization to suspend the application of concessions and obligations to the party that has failed to implement the DSB recommendations and rulings. Article 22.6 requires the DSB to grant such authorization within 30 days of the expiry of that period, unless there is consensus to reject the request. If the party that has failed to implement the DSB recommendations and rulings requests arbitration on the level of the suspension proposed by the prevailing party, the matter shall be referred to arbitration under Article 22.6. The text of the DSU is clear that such rights are to be exercised within the time frames set forth in Article 22.

The EC’s failure to bring its regime for the importation, sale and distribution of bananas into compliance with the *GATT* and the *GATS*, or to otherwise comply with the recommendations and rulings of the DSB in this matter results in a loss in U.S. exports of US\$520 million, including lost U.S. exports of goods and services used in the production of Latin American bananas for the European market and lost profits of U.S. service suppliers on the distribution and sale of Latin American bananas in the European market. In accordance with the schedule established in Article 22.2, the United States requests authorization from the DSB, at its meeting on January 25, 1999, to suspend the application to the EC, and member States thereof, of tariff concessions and related obligations under the *GATT*, covering trade in an amount of US\$520 million.

In considering what concessions to suspend, the United States applied the principles and procedures set forth in Article 22.3 of the DSU, and makes this request pursuant to Article 22.3(a). As required by Article 22.4 of the DSU, the level of suspension proposed is equivalent on an annual basis to the nullification or impairment of benefits accruing to the United States, resulting from the EC’s failure to comply with the DSB’s recommendations and rulings. The United States intends to implement this suspension of tariff concessions and related obligations under the *GATT* by directing the U.S. Customs Service to impose duties in excess of bound rates on the products listed in the attachment to this request.

## LIST OF PRODUCTS

The imposition of increased duties would apply to products that are both: (1) classified in the subheadings of the Harmonized Tariff Schedule of the United States listed below; and (2) the product of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom. The product descriptions that are provided below are for the convenience of the reader and are not intended to delimit in any way the scope of the products that would be subject to increased duties.

HTS Number	Product Description
02101900	Meat of swine, other than hams, shoulders, bellies (streaky) and cuts thereof, salted, in brine, dried or smoked
04069057	Pecorino cheese, from sheep's milk, in original loaves, not suitable for grating
19053000	Sweet biscuits; waffles and wafers
33073050	Bath preparations, other than bath salts
34060000	Candles, tapers and the like
39202000	Nonadhesive plates, sheets, film, foil and strip, noncellular, not reinforced or combined with other materials, of polymers of propylene
42022215	Handbags, with or without shoulder straps or without handle, with outer surface of sheeting of plastics
42023210	Articles of a kind normally carried in the pocket or handbag, with outer surface of reinforced or laminated plastics
48055000	Uncoated felt paper and paperboard in rolls or sheets
48192000	Folding cartons, boxes and cases of noncorrugated paper or paperboard
49090040	Printed cards (except postcards) bearing personal greetings, messages or announcements, with or without envelopes or trimmings
49119120	Lithographs on paper or paperboard, not over 0.51 mm in thickness, printed not over 20 years at time of importation
61101010	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted, wholly of cashmere
63022190	Bed linen, not knit or crochet, printed, of cotton, not containing any embroidery, lace, braid, edging, trimming, piping or applique work, not napped
85072080	Lead-acid storage batteries other than of a kind used for starting piston engines or as the primary source of power for electric vehicles
85167100	Electrothermic coffee or tea makers, for domestic purposes
94051080	Chandeliers and other electric ceiling or wall lighting fittings (other than used for public spaces), not of base metal